IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION (PIL) NO.1241 OF 2005

Hareshwar Patil .. Petitioner
v/s.
Municipal Commissioner,
Brihanmumbai Mahanagar Palika and others. .. Respondents

Mr.Rakesh Kumar i/by M/s.Legal Vision for the petitioner.

Mr.K.K.Singhvi, Senior Counsel with Ms.P.A.Purandare for the respondent Nos.1 to 3.

Mr.Y.S.Jahagirdar, Senior Counsel with Mr.B.D.Joshi for the respondent Nos.4 and 5.

CORAM : R.M. LODHA &
ANOOP V.MOHTA, JJ.

DATED : 1ST MARCH, 2006.

P.C.

We heard Mr.Rakesh Kumar, the learned counsel for the petitioner, Mr.K.K.Singhvi, the learned senior counsel for the respondent Nos.1 to 3 and Mr.Y.S.Jahagirdar, the learned senior counsel for the respondent Nos.4 and 5.

2. In the writ petition, the petitioner who is former mayor of Bombay seeks direction to the Municipal Commissioner, Municipal Corporation of Greater Mumbai and its functionaries to demolish the unauthorised construction carried out on the `play ground' situate at survey No.55(1)

and CTS No.1161-B, 1171-B. He has also prayed for demolition of the high rise boundary enclosing the said playground and remove the gates placed on the front and rear entries of the playground. The petitioner further prayed that respondent Nos.4 and 5 be restrained from charging any membership fee from the general public and/or any fee for using the said playground and for direction to the Corporation, its authorities and the respondent No.4-Dahisar Sports Foundation to keep the said playground open for the general public at all reasonable time. The petitioner has prayed that the agreement entered into between the Municipal Corporation of Greater Mumbai and the respondent No.4- Dahisar Sports Foundation for giving the said playground on adoption basis be quashed. The petitioner has sought further direction to the Municipal Corporation to open the road (pathway) passing through the said playground for the general public.

3. On behalf of the Municipal Corporation of Greater Mumbai, an affidavit has been filed by Prakash A. Naringrekar, Superintendent of Garden. It is admitted that the said plot is reserved for `playground' as per the sanctioned development plan of R/North Ward, Mumbai. It is stated that as per the policy guidelines and the advertisement that was published in the various newspapers by the Superintendent of Garden for getting offers for the adoption of gardens/recreation ground/playground, the subject plot was given on adoption as playground to M/s.Dahisar Sports Foundation (respondent No.4). As per the policy guidelines dated 20th August, 2001, the playground can be given for adoption normally for a

period of five years and that is how vide agreement dated 26th May, 2003, the permission was granted to Dahisar Sports Foundation to beautify and maintain the playground on adoption basis for a period of five years from 7.2.2003 to 6.2.2008 on yearly renewal basis subject to the condition that the said plot shall be properly beautified to the satisfaction of the Additional Municipal Commissioner.

4. In reply affidavit filed on behalf of the respondent Nos.1 to 3, it is also stated that when the playground was handed over to the respondent No.4, there was a shed on the playground admeasuring 115' x 20'. The said shed was in possession of the contractors who were entrusted with the work of construction of vehicular bridge. The Assistant Commissioner, R/North Ward informed the respondent No.4 that the Corporation has no objection to allow the said structure to be used for storage and toilet facility. However, it was clarified that the respondent No.4 shall not allow any third party to use the same without the permission of the Corporation. As regards the pathway passing through the playground, it is submitted that if the said pathway is permitted to be retained, the user of playground shall be hampered.

5. The respondent Nos.4 and 5 have also filed an affidavit in reply. They admitted that the subject plot is reserved for playground and that they have been entrusted the said plot on adoption basis for maintenance and management of the playground. They denied existence of any pathway. It is admitted that various sports activities are conducted on the said ground. It is the case of the respondents 4 and 5 that the coaching is given to the

school children at a nominal rate in various faculties of sports such as cricket, volleyball, gymnastic, karate, athletics, boxing and other indoor games. As regards the use of the playground, it is stated that it is kept open for public free of charge between 6 a.m. to 9 a.m. and 4 p.m. to 8 p.m. They admitted that they have been entrusted the playground on the caretaker basis. As regards the sports complex, it is stated that respondent No.5 has applied to the Corporation for allowing them to construct sports complex on the said ground and for training to the students. In the affidavit of Respondent Nos.4 and 5, it is stated that they have 1000 members.

6. In Sarvajanik Shri Ganeshotsav Mandal and another v. Municipal Corporation of Greater Mumbai and others, Appeal No.16 of 1997 decided by us on 23rd February, 2006, we held that the open space reserved in the development plan for playgrounds must at all times be used exclusively for the play of children and similar individual recreational activities and that no part of such playgrounds can be permitted to be used for any other purpose. We emphasised that land use in the city must strictly be in conformity with the development plan and the area reserved for playground under the development plan sanctioned by the State Government has to be used as such and cannot be truncated by permitting other public purpose. We held thus-

> "17. That playgrounds must at all times be reserved exclusively for the play of children and similar individual recreational activities and that no part of these playgrounds can be permitted to be used for any other purpose needs no emphasis save and except its temporary user for religious/National functions as provided under Section 37A

of MRTP Act, 1966.

> 18. It has to be emphasised that land use in the city must strictly be in conformity with the development plan and the area reserved for `playground' under the development plan sanctioned by the State Government has to be used as such and cannot be truncated by permitting other public purpose.
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> 20. When the reservation of the open space is for the purpose specific in the development plan, it can be put to that use alone and no other use. `Play ground', `swimming pool' `gymnasium', `park' even though covered under the head `Recreational grounds and facilities' is a separate and distinct `use' category and cannot be put to interchangeable use wholly or partly. Seen thus, swimming pool can never be covered by expression `playground' or vice versa.
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> 21. We have no hesitation in holding that the subject plot reserved for `playground' in the revised final development plan duly sanctioned and published by the State Government could not have been permitted for the purposes of the swimming pool and sports complex at all as has been done by the Corporation. The decision to construct `swimming pool' and `sports complex' in the area reserved for `playground' is wholly illegal and in derogation to the revised development. What shocks us is that has been done by the Corporation."

7. In what we held in Sarvajanik Shri Ganeshotsav Mandal and we need not repeat, it has to be held that subject plot cannot be used for any purpose other than playground. It cannot be permitted to be used as a sports complex.

8. As regards construction of ancillary uses we held that for the purposes of Regulation 9(5), Explanation (iv), the ancillary uses may be facility area, change rooms, small pavilion or sitting area etc. but by no stretch of imagination, `swimming pool' and `sports complex' can be considered as ancillary use for the playground. The playground has to be

used for playground at all times and we hold that playground cannot be permitted to be truncated by the use of sports complex.

9. As per the guidelines under which the respondent No.5 has been entrusted the subject plot for maintenance and management on adoption basis, no commercial exploitation is permissible without the sanction of the Municipal Commissioner. The said guidelines only permit construction of 20' x 10' for the purposes of store room and watchman chowky.

10. The existing structure at site that admeasures 115' x 20' is much above the area permissible in the guidelines. Not more than 200 sq.ft. Of construction can be allowed to remain as per the guidelines. We, therefore, have to order demolition of structure exceeding 200 sq.ft. And we order accordingly. Even the structure of 200 sq.ft. shall only be used for the purposes of store room and watchman chowky.

11. The open space reserved in the development plan for playground belonging to the Corporation has to remain as playground and open for most of the time in the day. Its commercial exploitation by the caretaker cannot be permitted save and except service charges provided in clause 9 of the Circular dated 20th August, 2001.

12. We are informed by the learned senior counsel for the Corporation as well as the learned senior counsel for the respondent Nos.4 and 5 that the structure in the playground has been taken over by the Corporation. The Corporation shall abide by the aforesaid direction to demolish the entire structure, save and except, the structure admeasuring 20' x 10' that is permissible for the purposes of watchman chowky and store room without

delay.

13. The respondent nos.4 and 5, during the subsistence of the agreement dated 07.02.2003 are permitted to maintain and manage the subject plot as playground as caretaker. However, they shall make the ground available to the public without any hindrance for whole day except couple of hours that may be necessary for maintenance and without charges save and except the service charges as provided in clause 9 of the Circular dated 20th August, 2001 upon fulfillment of conditions as mentioned therein.

14. The respondent Nos.4 and 5 shall not use the playground for the purposes of sports complex or for any purpose other than playground. In the event of breach of the agreement dated 07.02.2003 or this order by the respondent nos. 4 and 5, the respondent nos. 1 to 3 shall remove the respondent nos. 4 and 5 from managing and maintaining the subject plot after giving notice of three days.

No costs.

(R.M.LODHA, J.)

(ANOOP V. MOHTA, J.)